

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

MARK SANFORD, Governor of the State of  
South Carolina,

Plaintiff,

v.

HENRY McMASTER, in his official capacity  
as Attorney General of the State of South  
Carolina,

Defendant.

No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Mark Sanford, Governor of the State of South Carolina, by and through his attorneys Kilpatrick Stockton LLP, for his Complaint against Defendant, respectfully alleges as follows:

**INTRODUCTION**

1. On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (“ARRA”), Pub. L. No. 111-5, 123 Stat. 115 (2009). ARRA is the widely publicized federal stimulus law that adopts massive new federal spending programs that the President and Congress intend to speed the nation’s recovery from the current economic downturn. Among other new spending programs, ARRA establishes the State Fiscal Stabilization Fund (“SFSF”). *See* ARRA § 14001, *et seq.*, 123 Stat. 115, 279-86 (2009). The SFSF is administered by the United States Department of Education and, among other things, permits state governors to apply for approximately \$48.6 billion in the aggregate for use by state educational systems, to be paid to state governors in two phases over the next two years.

2. As a condition of applying for and accepting the massive federal funds provided by the SFSF, the states, through their governors, must agree to numerous federal educational mandates and spending commitments. If accepted by South Carolina, the compulsory mandates and spending commitments would increase state educational spending to levels that would be wholly unsustainable when SFSF funding ends in two years, forcing the state to institute either massive budget cuts or massive tax increases, or both.

3. The SFSF section of ARRA provides state governors—and *only* state governors—with the exclusive, discretionary authority to apply for SFSF funds. In the good faith exercise of his executive authority, Governor Sanford has concluded that the acceptance of SFSF funds by South Carolina, which would require his agreement to the various onerous federal educational mandates and unsustainable spending commitments, would further burden South Carolina's economy and substantially increase the State's debt in the future, and therefore is contrary to the welfare of the people of South Carolina. Thus, as he repeatedly has stated, Governor Sanford has exercised the discretion Congress accorded to him in the SFSF provisions of ARRA and decided not to apply for SFSF funds from the Department of Education unless the General Assembly agrees to use an equivalent amount of state funds to pay down state debt.

4. In response to Governor Sanford's stated intention not to apply for the SFSF funds, the South Carolina General Assembly appropriated \$350 million in SFSF funds in the 2009-2010 General Appropriations Law. On May 19, 2009, Governor Sanford vetoed these provisions of the General Appropriations Law. On May 20, 2009, the General Assembly enacted the General Appropriations Law over the Governor's veto.

5. Part III, Section 1 of the General Appropriations Law provides that "(1) within five days of the effective date of this Part, the Governor shall submit an application to the United

State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds." By this provision, the General Assembly intended to require Governor Sanford to apply for the SFSF funds allocated for South Carolina, regardless of whether or not the Governor, in his sole discretion as provided to him in ARRA, decided to apply for those funds or believed that application for those funds was in the best interests of the people of South Carolina.

6. ARRA provides Governor Sanford with exclusive, discretionary authority to apply for the SFSF funds, and the South Carolina General Assembly must recognize and accept the Governor's authority under ARRA if it wishes to receive SFSF funds. The General Assembly cannot pick and choose which parts of ARRA it will follow, and which it will ignore. Thus, to the extent that Part III, Section 1 of the General Appropriations Law conflicts with Governor Sanford's authority as provided by ARRA, it is preempted by ARRA and invalid under the Supremacy Clause of the United States Constitution.

7. In addition, the South Carolina Constitution vests Governor Sanford with the supreme executive authority of South Carolina. Through exercise of this supreme executive authority, the Governor carries out various executive functions of the state government and has inherent discretionary authority concerning the manner in which those executive functions are performed. Part III, Section 1 of the General Appropriations Law violates the Separation of Powers Clause of the South Carolina Constitution by depriving the Governor of his executive authority provided by the South Carolina Constitution.

8. For these reasons, the Court should invalidate Part III, Section 1 of the General Appropriations Law.

### **PARTIES**

9. Plaintiff Mark Sanford is Governor of the State of South Carolina.

10. Defendant Henry McMaster, sued in his official capacity, is South Carolina Attorney General and has authority to enforce the laws of the State of South Carolina, including the provisions of the 2009-2010 General Appropriations Law concerning the SFSF funds.

### **JURISDICTION AND VENUE**

11. This action is brought pursuant to Article VI of the United States Constitution; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009); and Article I of the South Carolina Constitution.

12. The Court has federal question jurisdiction over this Action pursuant to 28 U.S.C. §§ 1331 and 2201, and supplemental jurisdiction over any state-law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

### **THE STATE FISCAL STABILIZATION FUND**

14. On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (“ARRA”), Pub. L. No. 111-5, 123 Stat. 115 (2009).

15. The State Fiscal Stabilization Fund (“SFSF”) provisions of ARRA, § 14001 *et seq.*, 123 Stat. 279-86, appropriate approximately \$48.6 billion for use by state governors to support state educational systems.

16. The SFSF provisions expressly state that the U.S. Secretary of Education “shall make grants *to the Governor* of each State” and that “[*t*]he Governor of a State desiring to

receive an allocation under section 14001 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.” These and other provisions of ARRA expressly confer on Governor Sanford the *exclusive* authority, based on his sole discretion, to apply for and receive SFSF funds on behalf of South Carolina.

17. The SFSF provisions also confer on Governor Sanford the *exclusive* authority to disburse any SFSF funds provided to South Carolina by the U.S. Department of Education pursuant to the SFSF.

18. Governor Sanford’s discretion in applying for and disbursing SFSF funds is further explained in and provided by the Department of Education’s Official Guidance on the State Fiscal Stabilization Program and other related rules and regulations issued or promulgated by the Department of Education.

19. As an express condition imposed by ARRA upon Governor Sanford before he can apply for and receive SFSF funds, Governor Sanford, on behalf of South Carolina, must agree to various educational mandates and spending commitments set forth by the federal government in the SFSF provisions and related regulatory guidance, rules and regulations. Governor Sanford believes that the acceptance of SFSF funds by South Carolina, which would require his agreement to these onerous federal educational mandates and unsustainable spending commitments, would further burden South Carolina’s economy and substantially increase the State’s debt in the future, and therefore is contrary to the welfare of the people of South Carolina.

#### **THE 2009-2010 SOUTH CAROLINA GENERAL APPROPRIATIONS LAW**

20. On May 20, 2009, the South Carolina General Assembly enacted the 2009-2010 General Appropriations Law by overriding Governor Sanford’s veto.

21. Part III, Section 2 of the General Appropriations Law appropriates \$350 million in SFSF funds and expressly provides to whom each dollar of SFSF funds must be disbursed.

22. Part III, Section 1 of General Appropriations Law provides as follows:

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes \$694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

**COUNT I**  
**DISCRETIONARY AUTHORITY OF THE GOVERNOR UNDER ARRA**  
**(FEDERAL PREEMPTION)**

23. Governor Sanford restates and incorporates by reference the allegations of paragraphs 1 to 22 of this Complaint, as if fully set forth herein.

24. The Supremacy Clause, Article VI of the United States Constitution, provides that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.” Pursuant to the Supremacy Clause, state law that conflicts or is inconsistent with federal law, or that stands

as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, is preempted and thus invalid and unenforceable.

25. ARRA provides Governor Sanford, and *only* Governor Sanford, with the discretion and exclusive authority to apply for SFSF funds on behalf of South Carolina and with the discretion and exclusive authority to disburse SFSF funds received from the Department of Education.

26. Part III, Section 1 of the General Appropriations Law requires Governor Sanford to apply for SFSF funds regardless of whether the Governor, in his sole discretion as provided by ARRA, otherwise would apply for those funds.

27. Part III, Section 1 of the General Appropriations Law also requires Governor Sanford to distribute SFSF funds to specified recipients in specified amounts, regardless of whether the Governor, in his sole discretion as provided by ARRA, would distribute those funds to different recipients or in different amounts.

28. Because Part III, Section 1 of the General Appropriations Law eliminates the exclusive discretion ARRA provided to Governor Sanford, the law conflicts or is inconsistent with ARRA and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. For this reason, Part III, Section 1 of the General Appropriations Law is preempted by ARRA under the Supremacy Clause of the Constitution and is invalid and unenforceable.

29. Governor Sanford therefore is entitled to a declaratory judgment that Part III, Section 1 of the General Appropriations Law is preempted by ARRA. The Governor further is entitled to a preliminary and permanent injunction enjoining Defendant McMaster from enforcing Part III, Section 1 of the General Appropriations Law.

**COUNT II**  
**SEPARATION OF POWERS**

30. Governor Sanford restates and incorporates by reference the allegations of paragraphs 1 to 29 of this Complaint, as if fully set forth herein.

31. The Separation of Powers Clause, Article I, Section 8 of the South Carolina Constitution, provides that “[i]n the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”

32. The Governor of the State of South Carolina is vested with “supreme executive authority” under Article IV, Section 1 of the South Carolina Constitution. The Governor has exclusive constitutional authority to carry out certain executive functions of the Government of South Carolina and also has inherent discretionary authority concerning the manner in which those executive functions are performed.

33. Part III, Section 1 of the General Appropriations Law violates the Separation of Powers Clause by depriving Governor Sanford of his executive authority provided by the South Carolina Constitution.

34. Governor Sanford therefore is entitled to a declaratory judgment that Part III, Section 1 of the General Appropriations Law violates the Separation of Powers Clause of the South Carolina Constitution. The Governor further is entitled to a preliminary and permanent injunction enjoining Defendant McMaster from enforcing Part III, Section 1 of the General Appropriations Law.

WHEREFORE, Governor Sanford respectfully requests a judgment against Defendant as follows:



(1) Declaring that Part III, Section 1 of the General Appropriations Law is preempted by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), and therefore is invalid and unenforceable.

(2) Declaring that Part III, Section 1 of the General Appropriations Law violates the Separation of Powers Clause of the South Carolina Constitution and therefore is invalid and unenforceable.

(3) Preliminarily and permanently enjoining the Attorney General from enforcing Part III, Section 1 of the General Appropriations Law.

(4) Granting Plaintiff such other and further relief as the Court may deem just and proper.

This the 20th day of May, 2009.

Respectfully submitted,

/s/ John W. Foster

John W. Foster (S.C. Bar No. 2087)  
KILPATRICK STOCKTON LLP  
1201 Hampton Street, No. 3A  
Columbia, SC 29201  
Telephone: (803) 744-3400  
Telecopier: (803) 765 0081  
JFoster@KilpatrickStockton.com

Adam H. Charnes (pro hac vice pending)  
Richard D. Dietz (pro hac vice pending)  
KILPATRICK STOCKTON LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
Telephone: (336) 607-7300  
Telecopier: (336) 607-7500  
ACharnes@KilpatrickStockton.com  
RDietz@KilpatrickStockton.com

A. Stephens Clay (pro hac vice pending)  
William R. Poplin, Jr. (pro hac vice pending)  
KILPATRICK STOCKTON LLP

1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530  
Telephone: (404) 815-6500  
Telecopier: (404) 815-6555  
SCLay@KilpatrickStockton.com  
RPoplin@KilpatrickStockton.com

*Counsel for Plaintiff Governor Mark Sanford*